

***2013 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

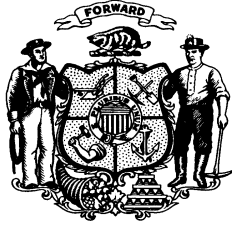
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February 2014

State of Wisconsin
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LEGISLATIVE COUNCIL STAFF
Terry C. Anderson
Director
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Deputy Director

February 2014

TO: THE HONORABLE SCOTT WALKER, GOVERNOR, AND THE WISCONSIN
LEGISLATURE

This report of the calendar year 2013 activity of the Legislative Council Rules
Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2013 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

CONTENTS

	<u>Page</u>
<i>FUNCTION OF THE LEGISLATIVE COUNCIL RULES CLEARINGHOUSE</i>	3
<i>2013 ACTIVITIES OF THE RULES CLEARINGHOUSE</i>	7
<i>APPENDIX 1: SAMPLE CLEARINGHOUSE REPORT</i>	15
<i>APPENDIX 2: PROCESSING INSTRUCTIONS TO AGENCY HEADS</i>	23

* This Report was prepared by Scott Grosz and Jessica Karls-Ruplinger, Co-Directors, Legislative Council Rules Clearinghouse.

FUNCTION OF THE LEGISLATIVE COUNCIL **RULES CLEARINGHOUSE**

REVIEW OF RULES

Legislative review of proposed permanent administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. [See the *Administrative Rules Procedures Manual* (November 2011), prepared jointly by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules. The Manual is available online at: <http://legis.wisconsin.gov/lc/adminrules/index.html>.]

The Legislative Council has 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed rule, a Clearinghouse Rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Co-Directors of the Rules Clearinghouse assign the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to a Co-Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix 1* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the proposed rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule for conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.

5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal statutes and regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

OTHER RELATED RESPONSIBILITIES

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment, or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and to eliminate obsolete, duplicative, and conflicting rules. This report is the 34th *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2013. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2012.

RECORDKEEPING SYSTEM

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks, and the Legislative Reference Bureau cooperate in a computerized recordkeeping system. Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a Clearinghouse Rule number and entered in the computer system by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate rule jacket and an Assembly rule jacket (similar to bill jackets) and the two rule jackets are then transmitted to the agency promulgating the rule. After transmittal, all legislative actions taken on the rule are entered on the face of the respective jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computer system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after the year 2000. These materials may be found at the Legislative Council's website, www.legis.wisconsin.gov/lc. A useful executive branch website for information about administrative rules is <https://health.wisconsin.gov/admrules/public/Home>.

2013 ACTIVITIES OF THE RULES CLEARINGHOUSE

During 2013, 118 proposed administrative rules were submitted to the Legislative Council by 17 state agencies.

As of December 31, 2013, Clearinghouse reports had been completed on 101 of the 118 proposed rules and 17 rules were in the process of review. In addition to the 101 rule reports completed on 2013 rules, reports were prepared in 2013 on 5 rules received in late 2012. Of the 106 reports completed in 2013, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2013 are summarized below:

Rules Received in 2013		118
Withdrawn	0	
No report required	0	
Pending	17	
		-17
2013 Reports Completed		101
2012 Reports Completed in January 2013		5
Total Reports in 2013		106

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2013, the Clearinghouse has received 6,260 rule submissions and completed reviews on 6,150 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 17 were under review at the end of 2013.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
2004	142	142	0
2005	122	123	0
2006	139	139	3
2007	117	114	0
2008	114	118	0
2009	123	108	3
2010	151	159	0
2011	53	57	0
2012	55	54	0
2013	118	106	0
Total	6,260	6,150	93

In 2013, rules were received from the following 17 state agencies:

Number of Proposed Rules, by Submitting Agency

Department of Administration	2
Department of Agriculture, Trade and Consumer Protection	10
Department of Children and Families	1
Department of Corrections	1
Department of Employee Trust Funds	2
Department of Health Services	1
Department of Natural Resources	24
Department of Public Instruction	10
Department of Revenue	10
Department of Safety and Professional Services	40
Department of Transportation	1
Department of Workforce Development	3
Employment Relations Commission	1
Insurance Commissioner	3
Public Service Commission	7
State Public Defender	1
Technical College System Board	1
Total Number of Rules Submitted	118

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2013, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 18 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 98 occasions.
3. A *conflict* with, or *duplication* of, existing rules on 3 occasions.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 45 occasions.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 84 occasions.

6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations on one occasion. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on no occasions.

WORKING WITH AND ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committee, except the Joint Finance Committee. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2013, legislative committees held hearings or requested meetings on 10 proposed rules. One rule was recalled by the agency, and two rules were recalled and resubmitted with germane modifications. Germane modifications to rules were received in the legislative review of three other proposed rules. Legislative committees did not request modifications or object to any rules during the year.

Pursuant to 2011 Wisconsin Act 21, all proposed permanent rules must be referred to the Joint Committee for the Review of Administrative Rules (JCRAR).¹ In 2013, JCRAR took action on one proposed permanent rule, meeting in executive session on May 1, 2013, to waive its jurisdiction over CHR 12-045.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2013.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79–80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	♦ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ♦ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—

¹ Prior to Act 21, only rules receiving a standing committee objection had to be referred to JCRAR. Act 21 requires that all rules be referred to JCRAR, but only requires that JCRAR take action on rules that received a standing committee objection.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
1989	212	22	6	2	0	♦ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ♦ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	♦ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	♦ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	♦ 1993 Wisconsin Act 9 ♦ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	♦ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ♦ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	♦ 1999 Wisconsin Act 178
2001	157	14	5	2	0	♦ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ♦ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ♦ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	♦ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	♦ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)
2004	142	21	4	2	1	♦ 2003 Wisconsin Act 240
2005	122	20	4	3	0	♦ 2005 Assembly Bill 8 and Senate Bill 8 (failed to pass) ♦ 2005 Assembly Bill 12 and Senate Bill 12 (failed to pass) ♦ 2005 Assembly Bill 401 and Senate Bill 200 (failed to pass) ♦ 2005 Assembly Bill 404 and Senate Bill 201 (failed to pass) ♦ 2005 Assembly Bill 442 and Senate Bill 220 (failed to pass)

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
2006	139	21	8	4	0	♦ 2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 37 and Senate Bill 9) ♦ 2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 27 and Senate Bill 10)
2007	117	16	2	0	0	—
2008	114	13	1	0	0	—
2009	123	4	0	0	0	—
2010	151	16	1	0	0	—
2011	53	6**	2	1	0	♦ 2011 Assembly Bill 196 and Senate Bill 139 (failed to pass)
2012	55	3**	0	0	0	—
2013	118	5	0	0	0	—
TOTAL	6,260	729	106	35	13 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

** Includes rules modified by JCRAR.

ELECTRONIC ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. It also has the economic impact analyses and fiscal estimates prepared by agencies, as well as reports prepared by the Small Business Regulatory Review Board.

Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000. [The Clearinghouse also has given advice to the Department of Health and Family Services (now the Department of Health Services) regarding a searchable rules website operated by the Executive Branch. That website is now operated by the Department of Administration. The website is <https://health.wisconsin.gov/admrules/public/Home>.]

NOTICE OF CHANGE IN RULE-MAKING AUTHORITY

DNR: Alcohol Beverages at Peninsula State Park

On June 10, 2013, pursuant to s. 227.15 (4), Stats., the Rules Clearinghouse notified JCRAR members, Senate President Michael Ellis, and Assembly Speaker Robin Vos, of a change in rule-making authority with respect to the Department of Natural Resources (DNR), as a result of 2013 Wisconsin Act 6, relating to sales and consumption of alcohol beverages at the Peninsula State Park golf course and clubhouse.

2013 Wisconsin Act 6 directed the DNR to allow a person with whom it contracts for golf operations in Peninsula State Park to sell alcohol beverages on the golf course or in the golf clubhouse and to allow users of the golf course or golf clubhouse who are at least 21 years of age to possess and consume those alcohol beverages. Under the Act, the DNR may impose restrictions on the sale of alcohol beverages that are consistent with the restrictions imposed upon Class “B” licensees and “Class B” licensees under ch. 125, Stats. 2013 Wisconsin Act 6 took effect on March 28, 2013.

Prior to enactment of Act 6, s. NR 45.13 (10) (c), Wis. Adm. Code, prohibited the possession and consumption of alcohol beverages on the golf course or in the clubhouse at Peninsula State Park.

DNR: Lease of Radio Tower or Lookout Tower Site

2013 Wisconsin Act 27 authorized the DNR to enter into a lease of a DNR radio tower or a lookout tower site with a private person or a governmental entity for the purpose of installing a commercial or noncommercial telecommunications system. The lease may allow the owner or operator of the telecommunications system to provide telecommunications services to persons other than employees of a governmental entity. If the owner of the telecommunications system is the state, the DNR may not charge a fee. If the owner of the telecommunications system is another governmental entity, the DNR may charge a fee that may not exceed \$25 per month.

Prior to Act 27, s. NR 1.483, Wis. Adm. Code, limited the department’s authority to enter into tower leases only for the installation of telecommunication systems owned by the state or other governmental entities.

ASSISTING THE LEGISLATURE AND STATE AGENCIES

In 2013, the Legislative Council Rules Clearinghouse staff responded to questions concerning the rule-making process and the laws governing legislative and gubernatorial review of proposed rules.

PUBLIC LIAISON

In 2013, the Rules Clearinghouse staff received a number of requests from the public for information about aspects of the rule-making process or the status of specific rules.

SG:JKR:jal

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **13-092**

AN ORDER to create chs. ERC 70, 71, and 80, relating to annual certification elections.

Submitted by **EMPLOYMENT RELATIONS COMMISSION**

10-15-2013 RECEIVED BY LEGISLATIVE COUNCIL.

11-12-2013 REPORT SENT TO AGENCY.

SG:JEO

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-092

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. Section 111.70 (4) (d) 3. b., Stats., provides that the employees in the bargaining unit may not be included in a substantially similar collective bargaining unit for a period of one year if a representative is decertified. Why is “at least” used in s. ERC 70.03 (7) (b) 2. when the statute does not include “at least”? This same comment applies to ss. ERC 70.11 (2), 71.03 (7) (b) 2., 71.11 (2), 80.03 (7) (b) 2., and 80.11 (2).

b. Section ERC 70.01, in part, provides the following: “Once a timely petition has been filed, an existing representative’s exclusive representative status is not adversely affected if the balloting is not concluded or the results of the election are not certified on or before December 1.” It appears that this provision allows a representative to continue representation if an election is not completed prior to December 1. Section 111.70 (4) (d) 3. b., Stats., requires that an election occur no later than December 1. Under what authority does the proposed rule allow a representative to continue the representation despite the lack of an election prior to December 1? A similar comment applies to ss. ERC 71.01 and 80.01.

2. Form, Style and Placement in Administrative Code

a. The rule summary should contain all of the headings described in s. 1.02 (2) (a), Manual, including the headings described in s. 1.02 (2) (a) 9. and 13., Manual.

b. The proposed rule should be divided into numbered SECTIONS. [s. 1.04, Manual.] Before ch. ERC 70, insert “SECTION 1. ERC 70 and 71 are created to read:”. Before ch. ERC 80, insert “SECTION 2. ERC 80 is created to read:”.

c. Throughout the proposed rule, references to “two” should be replaced with “2” and references to “four” should be replaced with “4”. [s. 1.01 (5), Manual.]

d. Chapter titles should be centered. [s. 1.05 (2) (a), Manual.]

e. In s. ERC 70.02, a period should be inserted after the title. [s. 1.05 (2) (b), Manual.] This same comment also applies to ss. ERC 70.03, 71.03, and 80.03.

f. The fee schedule in s. ERC 70.03 (4) would be better drafted as a list to eliminate the need to repeat the same language for each fee listed. Also, do not use parentheses to indicate an optional plural form of the word “organizations” in the last sentence. Instead, use the singular form. [s. 1.01 (9) (e), Manual.] These same comments also apply to ss. ERC 71.03 (4) and 80.03 (4).

g. In s. ERC 70.03 (6) (f) (intro.), insert “all of” after “including”. [s. 1.03 (3), Manual.] This same comment also applies to ss. ERC 71.03 (6) (f) (intro.) and 80.03 (6) (f) (intro.).

h. In s. ERC 70.03 (7) (c), the word “will”, when used, should be “shall”. This same comment also applies to ss. ERC 70.11 (intro.), 71.03 (7) (c), 71.11 (intro.), 80.03 (7) (c), and 80.11 (intro.).

i. In s. ERC 70.07 (4), delete the par. (a) and title. Subdividing into paragraphs is improper form if there is only one paragraph. [s. 1.03 (1), Manual.] This same comment also applies to ss. ERC 71.07 (4) and 80.07 (4).

j. In s. ERC 70.10 (2), the introductory sentence that leads to pars. (a) to (c) does not follow the format for introductory material in s. 1.03 (3), Manual. Rather than use an introductory sentence, the (intro.) could be numbered par. (a) and pars. (a) to (c) could be numbered pars. (b) to (d). Alternatively, add a phrase to the end of s. ERC 70.10 (2) (intro.) that introduces the subparts and ends in a colon, such that each subunit forms a complete sentence when read with the introductory material. This same comment also applies to ss. ERC 71.10 (2) and 80.10 (2).

k. In s. ERC 71.03 (7) (b), insert a “1.” after the paragraph title.

l. The effective date section should be labeled as SECTION 3. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ERC 70.03 (2), “s. ERC 70.03 (4)” should be replaced with “sub. (4)”. [s. 1.07 (2), Manual.] A similar comment also applies to ss. ERC 71.03 (2) and 80.03 (2).

b. In s. ERC 70.03 (2), the reference to “sub. (3)” in the second-to-last sentence should be “sub. (5)”. This same comment also applies to ss. ERC 71.03 (2) and 80.03 (2).

c. In s. ERC 70.03 (7) (b) 2., the reference should be to “subd. 1.”, not “sub. (b) 1.”. [s. 1.07 (2), Manual.] This same comment also applies to ss. ERC 71.03 (7) (b) 2. and 80.03 (7) (b) 2.

d. In s. ERC 70.04, “ss. ERC 70.03 (7) (b) and (c)” should be replaced with “s. ERC 70.03 (7) (b) and (c)”. [s. 1.07 (2), Manual.] A similar comment also applies to ss. ERC 71.04 and 80.04.

e. In s. ERC 70.05 (1), the reference to s. ERC 70.03 should be more specifically to s. ERC 70.03 (3). A similar comment also applies to ss. ERC 71.05 (1) and 80.05 (1).

f. In s. ERC 80.04, “s” should be inserted before “. ERC 80.03 (7) (a)”. [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the rule summary, the agency might consider revising its description of the federal and state court litigation to reflect recent activity in the litigation and providing a more detailed description of the litigation.

b. In the rule summary, under the description of s. ERC xx.02, the reference to definitions should be removed. Those sections do not contain definitions.

c. Throughout the proposed rule, “%” should be replaced with “percent”.

d. In the title for ch. ERC 70, “**ERC70**” should be replaced with “**ERC 70**”.

e. In ch. ERC 70 (title), a comma should be inserted after “**AUGUST 30**” to be consistent with the title of ch. ERC 71. Similarly, in ch. ERC 80 (title), commas should be inserted before and after “**AS OF AUGUST 30**”.

f. In s. ERC 70.01, a comma should be inserted after “or any other labor organization interested in representing such employees”. This same comment also applies to s. ERC 71.01.

g. In s. ERC 70.01, “outcome-determinative issues concerning which ballots should be counted and any other potentially outcome-determinative issues” should be replaced with “outcome-determinative issues, including which ballots should be counted”. This same comment also applies to ss. ERC 71.01 and 80.01.

h. In s. ERC 70.02 (2) (a), “as” should be inserted before “defined”. This same comment also applies to ss. ERC 70.02 (2) (b), 71.02 (2) (a) and (b), and 80.02 (1) (a) and (2) (a).

i. In s. ERC 70.03 (2), delete the second period in the middle of line 3.

j. In s. ERC 70.03 (2), why are both “actually received” and “received” used when referring to the commission’s receipt of a petition? The agency might consider replacing “actually received” with “received”. This same comment also applies to s. ERC 71.03 (2).

k. In s. ERC 70.03 (7) (c), what is meant by “an opportunity to respond to the propriety of the request”? The agency should clarify this. This same comment also applies to ss. ERC 71.03 (7) (c) and 80.03 (7) (c).

l. In s. ERC 70.04, “but with the date of dismissal of the withdrawn petition applying” should be replaced with “but the date of dismissal of the withdrawn petition shall apply”. This same comment also applies to ss. ERC 71.04 and 80.04.

m. In s. ERC 70.05 (1), “the employees” should be replaced with “each employee’s” on line 7, and “the employee’s” should be replaced with “each employee’s” on line 8. [s. 1.01 (9) (e), Manual.] This same comment also applies to ss. ERC 71.05 (1) and 80.05 (1).

n. In s. ERC 70.07 (5), the agency should specify how telephonic votes will be counted. Only the counting of physical ballots is currently specified. This same comment also applies to ss. ERC 71.07 (5) and 80.07 (5).

o. In s. ERC 70.07 (6), should “eligible voters” be replaced with “employees eligible to vote”? This same comment also applies to ss. ERC 71.07 (6) and 80.07 (6).

p. In s. ERC 70.08, delete the first use of the word “and”. This same comment also applies to ss. ERC 71.08 and 80.08.

q. In s. ERC 70.09 (1), a party may file “objections to the conduct of the election or conduct affecting the results of the election”. It would be helpful to clarify how, if at all, these two concepts differ from each other. This same comment also applies to ss. ERC 71.09 (1) and 80.09 (1).

r. Section ERC 70.10 is titled “Commission action on challenges or objections”. Are challenges and objections different? This same comment also applies to ss. ERC 71.10 and 80.10.

s. In s. ERC 70.10 (1), “which” should be replaced with “that”. This same comment also applies to ss. ERC 71.10 (1) and 80.10 (1).

t. In s. ERC 71.03 (1), “only” should be removed. This same comment also applies to s. ERC 80.03 (1).

u. In s. ERC 71.03 (2), delete “and unless” on line 5.

v. In s. ERC 71.11 (1), “as the date of commission’s certification” should be replaced with “as of the date of the commission’s certification”.

w. Throughout ch. ERC 80, use lowercase “state” in place of “State”. [s. 1.01 (4), Manual.]

x. In s. ERC 80.03 (6) (f) 3., “berepresented” should be replaced with “be represented”.

APPENDIX 2
PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY 13-092

AN ORDER to create chs. ERC 70, 71, and 80, relating to annual certification elections.

Submitted by Employment Relations Commission

10-15-13	Received by Legislative Council.		
11-12-13	Report sent to Agency.		

NOTE: EACH SUBSEQUENT ACTION TAKEN BY A STANDING COMMITTEE OR THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES WILL BE ENTERED ON THE JACKETS BY APPROPRIATE LEGISLATIVE STAFF.